REMARKS

The Office Action mailed August 22, 2007, has been received and reviewed. Claims 1 through 26 are currently pending in the application. Claims 1 through 26 stand rejected. Applicant respectfully requests reconsideration of the application in view of the arguments and remarks set forth hereinbelow.

Preliminary Amendment

Applicant's undersigned attorney notes the filing herein of a Preliminary Amendment on March 15, 2004, which filing was not acknowledged in the outstanding Office Action. Should the Preliminary Amendment have failed for some reason to have been entered in the Office file, Applicant's undersigned attorney will be happy to have a true copy thereof hand-delivered to the Examiner.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Publication No. 2007/0087825 to Hart et al. in view of U.S. Publication No. 2003/0199315 to Downes

Claims 1 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Publication No. 2007/0087825) in view of Downes (U.S. Publication No. 2003/0199315). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure. *DyStar Textilfarben*

GmbH & Co. Deutschland KG v. C. H. Patrick Co., 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obviousness determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367. Applicant submits that the Examiner has not established a prima facie case of obviousness.

Independent claim 1 is directed to a method of playing a pari-mutuel wagering game. The method comprises: identifying a plurality of potential outcomes for an event; affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes *and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted*; forming a pari-mutuel wagering pool having funds comprised of all wagers placed; recording an amount of each game participant's wager and the specified odds level accepted for each wager; identifying at least one of the plurality of potential outcomes as a winning outcome for the event; identifying all game participants of the plurality of game participants that placed a wager on the winning outcome as winning game participants; and distributing, from the pari-mutuel wagering pool, an appropriate payout to each winning game participant.

The Examiner cites Hart as describing "systems and methods for providing a user with the ability to submit a wager to a fixed-odds book or a pari-mutuel pool using an interactive wagering application" wherein "the player selects one horse and such horse has to cross the finish line either first, second or third for the player to win." (Office Action, page 2). Additionally, the Examiner notes that Hart describes multiple pools wherein the "odds of winning the second pool are less than the first pool." (*Id*). The Examiner states that, according to Hart, "if a player is successful in its selections such that the order of indicia based on the order of finish of the competitors in the virtual race is the same as the positions of finish selected by the player, such player will win." (*Id*, page 3). Finally, the Examiner cites Hart as describing that "a share of the first pool proportionate to the wagers made on the first wager type is distributed to each of the players in the first and second group if the selected position of finish by the players in the first or second group is the same as the order of indicia." (*Id*).

The Examiner acknowledges that Hart does not specifically describe recording the participant's wager, but cites Downes as describing such subject matter. The Examiner then

states that "it would have been obvious to a person of ordinary skill in the art at the time of [sic] the invention was made to utilize the teachings of Downes in the device of Hart" wherein the motivation for doing so "would be to have the ability to separate a portion of the amounts wagered in the various betting pools and calculate approximate odd and payouts." (*Id*).

Applicant respectfully disagrees with the Examiner's characterization and assessment of Hart and Downes. Hart describes a pari-mutuel system including a "real time virtual horse racing game" wherein the outcome of the race is determined by a random number generator such that "each competitor has a statistically equal chance of winning." (Hart, Abstract). Different types of wagers are allowed including, for example, "Pick 1," "Pick 2," etc, where players select participants and the order of finish of the selected participants. The system includes having a specific pool for each wager type comprising a portion of all wagers made for that wager type. For example, "the pool for the Pick 1 wager type 110 is comprised of a predetermined portion of all wagers made for the Pick 1 wager type; the pool for the Pick 2 wager type 115 is comprised of a predetermined portion of all wagers made for the Pick 2 wager type" and so on. (*Id*, ¶ [0050]). "Furthermore, to encourage players to make wagers on Pick 6 (because the odds of winning are lower than the other wager types), an additional predetermined portion of all wagers made for each of Pick 1, Pick 2, Pick 3, Pick 4 and Pick 5 wager types is redistributed into the pool for the Pick 6 wager type." (*Id*, ¶ [0051]).

Downes describes a pari-mutuel sports wagering system where wagers are placed on "the performance statistics of individual sport or event participants, combinations of sport participants, combinations of event participants, and sport teams." (Downes, Abstract; see also ¶¶ [0204] – [0278]).

Applicant submits, however, that neither Hart nor Downes teach or suggest affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes *and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted.* Applicant fails to find any teaching or suggestion of such subject matter in either Hart or Downes, nor has the Examiner pointed to any such teaching or suggestion.

As such, Applicant submits that claim 1 is clearly allowable over the proposed combination of Hart and Downes. Applicant further submits that claims 2 through 16 are likewise allowable as being dependent from an allowable base claim as well as for the additional

patentable subject matter introduced thereby.

With respect to claims 3 through 16, Applicant submits that Hart and Downes fail to teach or suggest determining whether the funds in the pari-mutuel wagering pool are sufficient to return to each winning game participant the amount of that game participant's wager and to pay odds on each winning game participant's wager at the specified odds level accepted for each wager.

With respect to claim 4, Applicant submits that Hart and Downes fail to teach or suggest, if it is determined that the funds in the pari-mutuel wagering pool are sufficient, distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

With respect to claim 5, Applicant submits that Hart and Downes fail to teach or suggest, if it is determined that the funds in the pari-mutuel wagering pool are not sufficient, the method further comprises determining the cumulative amounts necessary to pay odds on each wager placed by a winning game participant at each odds level of the plurality of progressive odds levels and to pay odds on each wager placed by a winning game participant at an odds levels below each odds level of the plurality of progressive odds levels.

With respect to claim 6, Applicant submits that Hart and Downes fail to teach or suggest determining a max odds payout at a particular odds level at which the funds in the pari-mutuel wagering pool are sufficient to pay odds on all wagers placed by the winning game participants at the particular odds level and to pay odds on all wagers placed by the winning game participants at odds levels of the plurality of progressive odds levels that are below the particular odds level.

With respect to claim 7, Applicant submits that Hart and Downes fail to teach or suggest that Hart and Downes fail to teach or suggest that distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

With respect to claim 8, Applicant submits that Hart and Downes fail to teach or suggest determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

With respect to claim 9, Applicant submits that Hart and Downes fail to teach or suggest, if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to all the winning game participants, which share is proportional to each winning game participant's wager.

With respect to claim 10, Applicant submits that Hart and Downes fail to teach or suggest determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level below the max odds payout.

With respect to claim 11, Applicant submits that Hart and Downes fail to teach or suggest, if there is a surplus of the funds in the pari-mutuel wagering pool, that distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to at least a subset of the winning game participants, which share is proportional to each winning game participant's wager.

With respect to claim 12, Applicant submits that Hart and Downes fail to teach or suggest distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants.

With respect to claim 13, Applicant submits that Hart and Downes fail to teach or suggest that distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants that placed a wager at the max odds payout.

With respect to claim 14, Applicant submits that Hart and Downes fail to teach or suggest that distributing a share of the surplus of funds to at least a subset of the winning game

participants comprises distributing a share of the surplus to all winning game participants that placed a wager at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

Applicant, therefore, respectfully requests reconsideration and allowance of claims 1 through 16.

Obviousness Rejection Based on U.S. Publication No. 2007/0087825 to Hart et al. in view of U.S. Patent No. 6,695,701 to Aronson

Claims 17 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Publication No. 2007/0087825) in view of Aronson (U.S. Patent No. 6,695,701). Applicant respectfully traverses this rejection, as hereinafter set forth.

Independent claim 17 is directed to a method of playing a pari-mutuel wagering game. The method comprises: placing a wager on at least one outcome of a plurality of potential outcomes for an event, *the wager being placed in a pari-mutuel wagering pool; specifying, at the time the wager is placed, odds at which the wager is accepted*; and if the at least one outcome is a winning outcome, receiving an appropriate payout.

The Examiner relies on Hart as applied to claim 1 and as discussed hereinabove. The Examiner then relies on Aronson as "disclos[ing] totalisators as computer systems that may be used to handle pari-mutuel wagers made at the racetracks, made at off track betting establishments." (Office Action, page 12). The Examiner further states that, as described by Aronson, totalisators "generate wagering odds in real time" and, further, "generate these odds based on information on which wagers are being placed." (*Id*).

The Examiner concludes that it "would have been obvious to a person of ordinary skill in the art at the time of [sic] the invention was made to utilize the teachings of Aronson in the device of Hart to use the device in pari-mutuel wagering." (*Id*). Applicant respectfully disagrees.

The teachings of Hart are described hereinabove with respect to the Examiner's rejection of claim 1. Aronson describes a system and method of providing a user with the ability to submit a wager to a fixed-odds book or a pari-mutuel pool using an interactive wagering application. The system includes providing the user with a conditional wagering option where, for example, if

a wager placed with a fixed-odds book is refused, the wager may be automatically placed with a pari-mutuel pool. (See, e.g., Aronson, Abstract, col. 21, line 10 – col. 22 line 15). For example, "FIG. 17 shows a flow chart 1700 of illustrative steps involved in providing the user with the ability to automatically place a wager in a fixed-odds book if a pari-mutuel pool wager is not accepted" and "FIG. 18 shows a flow chart 1800 of illustrative steps involved in providing the user with the ability to automatically place a wager in a pari-mutuel pool if the fixed-odds book wager is not accepted." (*Id*, col. 21, lines 10-13 and 47-50). Aronson describes the "fixed-odds book" and "pari-mutuel pool" wagers as being exclusive of one another and does not appear to describe them as being conducted using a common or intermingled pool.

As such, Applicant submits that Hart and Aronson fail to teach or suggest placing a wager *in a pari-mutuel wagering pool* and *specifying, at the time the wager is placed, odds at which the wager is accepted.*

Applicant, therefore, submits that claim 17 is clearly allowable over Hart and Aronson. Applicant further submits that claims 18 and 19 are also allowable based on their dependency from an allowable base claim as well as for the additional patentable subject matter introduced thereby.

With respect to claim 18, Applicant submits that Hart and Aronson fail to teach or suggest that receiving an appropriate payout comprises receiving a return of the wager; and *if the pari-mutuel wagering pool contains sufficient funds, receiving odds on the wager at the odds at which the wager was accepted.*

With respect to claim 19, Applicant submits that Hart and Aronson fail to teach or suggest that receiving an appropriate payout further comprises *receiving a share of a surplus of funds* from the pari-mutuel wagering pool, which share is proportional to the wager.

Applicant, therefore, respectfully requests reconsideration and allowance of claims 17 through 19.

Obviousness Rejection Based on U.S. Patent No. 6,695,701 to Aronson in view of U.S. Publication No. 2003/0078090 to Byrne

Claims 20 through 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over

Aronson (U.S. Patent No. 6,695,701) in view of Byrne (U.S. Publication No. 2003/0078090). Applicant respectfully traverses this rejection, as hereinafter set forth.

Independent claim 20 is directed to a method of playing a pari-mutuel wagering game. The method comprises: identifying a plurality of potential outcomes for an event; setting an initial share price *for each of the plurality of potential outcomes*; affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes at the initial share price; *determining an adjusted share price for each of the plurality of potential outcomes*; affording the plurality of game participants an opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes *at the adjusted share price*; forming a pari-mutuel wagering pool comprising funds received for each share purchased; identifying at least one winning outcome from the plurality of potential outcomes for the event; and distributing, from the pari-mutuel wagering pool, an appropriate payout to each game participant that purchased at least one share in favor of the winning outcome.

The Examiner cites Aronson as disclosing a totilisator as discussed above with respect to the rejection of claim 17. The Examiner then cites Byrne, stating that "[i]n its broadest sense, the invention includes in a gambling game where there may be a number of events elected ones of which can lead to a winning result." (Office Action, page 14). The Examiner further states that, according to Byrne, all players who had selected that result type are paid a share of the available amount for that result type and that the "payment depends on the amount invested by the individual player and the total amount invented by the players in the collateral game since there has been a winning result." (*Id*). The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made, "to utilize the teachings of Byrne in the device of Aronson to provide a collateral game where players may take a second entry when they are playing a game," the motivation being "to encourage multi game multi ticket play at not extra overhead cost." (*Id*, page 15). Applicants respectfully disagree.

The teachings of Aronson are described hereinabove with respect to the Examiner's rejection of claim 17. Byrne describes a "Super Keno" game wherein an additional bet is placed in conjunction with a standard Keno game. (See, e.g., Byrne, ¶ [0013]). In one embodiment, if a

player wishes to participate in Super Keno, they pay to participate in a predetermined number (e.g., 5) of standard Keno games and then pay an additional fee to enter the Super Keno game. The additional fee goes into a Super Keno jackpot. A "share" of the Super Keno jackpot is won by all players entered into the Super Keno game if any of the players playing the Super Keno game win the Super Keno game. (See *id*, ¶ [0015] - [0017]).

While Byrne discloses the "sharing" of a jackpot or pool among a variety of participants based on the outcome of a particular game, Applicant fails to see any teaching or suggestion, and the Examiner has not cited any specific teaching or suggestion in either Aronson or Byrne, of a method that includes: setting an initial share price *for each of the plurality of potential outcomes*; affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes *at the initial share price*; determining *an adjusted share price for each of the plurality of potential outcomes*; and affording the plurality of game participants an opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes *at the adjusted share price*.

As such, Applicant submits that claim 20 is clearly allowable over the proposed combination of Aronson and Byrne. Applicant further submits that claims 21 through 24 are also allowable at least by virtue of their dependency from an allowable base claim.

Applicant, therefore, respectfully requests reconsideration and allowance of claims 20 through 24.

Obviousness Rejection Based on U.S. Publication No. 2007/0087825 to Hart et al. in view of U.S. Publication No. 2003/0078090 to Byrne

Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Publication No. 2007/0087825) in view of Byrne (U.S. Publication No. 2003/0078090). Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 25 is directed to a method of playing a pari-mutuel wagering game. The method comprises: *purchasing at least one share* in favor of a particular outcome of a plurality of potential outcomes for an event *at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool*; and if the particular outcome in favor of which the at least one

share was purchased is a winning outcome, receiving an appropriate payout.

The Examiner relies on Hart and Byrne as have been applied to other claims discussed hereinabove (see also Office Action, pages 18 and 19). The Examiner then states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made "to utilize the teachings of Byrne in the device of Hart to make appropriate payouts based on a winning outcome and total shares purchased" and that motivation to do so "would be to add excitement and interest for the players and to increase revenue for the jackpot." (*Id*, page 19).

The teachings of Hart and Byrne are each discussed hereinabove. While Byrne discloses the "sharing" of a jackpot or pool among a variety of participants based on the outcome of a particular game, Applicant fails to see any teaching or suggestion, and the Examiner has not cited any specific teaching or suggestion in either Aronson or Byrne, of a method that includes *purchasing at least one share* in favor of a particular outcome of a plurality of potential outcomes for an event *at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool.*

Applicant, therefore, submits that claim 25 is clearly allowable over Hart and Byrne. Applicant further submits that claim 26 is allowable as being dependent from an allowable base claim as well as for the additional patenable subject matter introduced thereby. For example, Applicant submits that Hart and Byrne fail to teach or suggest receiving funds equivalent to the share price at which each share in favor of the winning outcome was purchased, and receiving a dividend for each share purchased in favor of the winning outcome.

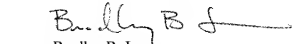
Applicant respectfully requests reconsideration and allowance of claims 25 and 26.

CONCLUSION

Claims 1 through 26 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain

which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,



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